

Senate Bill No. 94

CHAPTER 809

An act to amend Sections 18895.2, 18897.63, and 18897.87 of, to add Sections 18897.1 and 18897.97 to, and to add Article 1.5 (commencing with Section 18896) to Chapter 2.5 of Division 8 of, the Business and Professions Code, relating to athlete agents.

[Approved by Governor October 8, 1997. Filed
with Secretary of State October 9, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 94, Ayala. Athlete agents: disclosure.

(1) Existing law, the Miller-Ayala Athlete Agents Act, provides for the regulation of the activities of athlete agents, as specified.

This bill would, in addition, do all of the following:

(a) Expand certain regulatory exemptions from provisions of the act to include an individual acting solely as an agent for a foster child or ward.

(b) Require athlete agents, prior to engaging in or carrying on the business of an athlete agent, to file specified disclosures with the Secretary of State concerning the athlete agent and each individual acting as an athlete agent within a firm, company, or partnership, and make related changes, as specified.

(c) Require the payment of filing fees, as specified, to be paid into the State Treasury to the credit of the Business Fees Fund of the Secretary of State.

A violation of specified provisions of the Miller-Ayala Athlete Agents Act would subject an athlete agent to civil and criminal penalties. By expanding the scope of conduct subject to existing criminal penalties, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 18895.2 of the Business and Professions Code is amended to read:

18895.2. The following definitions govern the construction of this chapter:

(a) “Agent contract” means any contract or agreement pursuant to which a person authorizes or empowers an athlete agent to negotiate or solicit on behalf of the person with one or more professional sports teams or organizations for the employment of the person by one or more professional sports teams or organizations, or to negotiate or solicit on behalf of the person for the employment of the person as a professional athlete.

(b) (1) “Athlete agent” means any person who, directly or indirectly, recruits or solicits an athlete to enter into any agent contract, endorsement contract, financial services contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.

(2) (A) “Athlete agent” does not include a person licensed as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, or tax consultant, or other professional person, when the professional person offers or provides the type of services customarily provided by that profession, except and solely to the extent that the professional person also recruits or solicits an athlete to enter into any agent contract, endorsement contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.

(B) “Athlete agent” also does not include any person acting solely on behalf of a professional sports team or organization.

(C) “Athlete agent” also does not include a talent agency as defined in subdivision (a) of Section 1700.4 of the Labor Code and licensed by the Labor Commissioner pursuant to Chapter 4 (commencing with Section 1700) of Part 6 of Division 2 of the Labor Code, except as otherwise provided in this paragraph. “Athlete agent” includes a talent agency that (i) directly or indirectly recruits or solicits a student athlete to enter into an agent contract, endorsement contract, financial services contract, or professional sports services contract, or (ii) for compensation, procures, offers, promises, attempts, or negotiates to obtain employment for any person to perform on-field play with a professional sports team or organization.

(3) Sections 18896.6, 18897.6 and 18897.63 do not apply to an individual acting as an athlete agent solely for his or her spouse, child, foster child, ward, or grandchild.

(c) “Employment as a professional athlete” includes employment pursuant to an endorsement contract or a professional sports services contract.

(d) “Endorsement contract” means any contract or agreement pursuant to which a person is employed or receives remuneration for

any value or utility that the person may have because of publicity, reputation, fame, or following obtained because of athletic ability or performance.

(e) “Financial services” means the making or execution of an investment or other financial decision, or counseling as to a financial decision.

(f) “Negotiate” includes any contact on behalf of any athlete with a professional sports team or organization or on behalf of any person with any other person who employs or potentially may employ the person as a professional athlete, regardless of whether the contact is made in person, in writing, electronically, through representatives or employees, or in any other manner. “Negotiate” also includes being present during any discussion of an endorsement contract or professional sports services contract with representatives of the professional sports team or organization or potential or actual employer.

(g) “Person” means any individual, company, corporation, association, partnership, limited liability company, or their agents or employees.

(h) “Professional sports services contract” means any contract or agreement pursuant to which a person is employed or agrees to render services as a player on a professional sports team or organization or as a professional athlete.

(i) (1) “Student athlete” means any individual admitted to or enrolled as a student, in an elementary or secondary school, college, university, or other educational institution if the student participates, or has informed the institution of an intention to participate, as an athlete in a sports program where the sports program is engaged in competition with other educational institutions.

(2) “Student athlete” does not include any person who has entered into a valid agent contract, a valid endorsement contract, or a valid professional sports services contract. “Student athlete” does not include any student of a college or university whose eligibility to participate in an intercollegiate sport has terminated, as determined by the governing body of the state or national association for the promotion and regulation of intercollegiate athletics of which the student’s college or university is a member.

SEC. 2. Article 1.5 (commencing with Section 18896) is added to Chapter 2.5 of Division 8 of the Business and Professions Code, to read:

Article 1.5. Public Disclosure

18896. To assist enforcement of this chapter, each athlete agent, prior to engaging in or carrying on the business of athlete agent, shall file the following information with the Secretary of State, in the form that the Secretary of State shall prescribe, concerning the athlete

agent and each individual acting as an athlete agent within a firm, company, or partnership:

(a) The name, residence address, social security number, and driver's license number.

(b) The street and address number of all locations where the business of the athlete agent is to be conducted.

(c) The name and business address of a designated agent in California for service of process, as required by Section 18897.83.

(d) All businesses or occupations engaged in for the two years immediately preceding the date of filing.

(e) Any convictions for any of the following:

(1) A felony.

(2) A misdemeanor involving a violation of this chapter, or Chapter 1 (commencing with Section 1500) of Part 6 of Division 2 of the Labor Code as repealed by Chapter 857 of the Statutes of 1996, or the law of any other state governing athlete agents.

(3) Fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property.

(f) (1) The name of the insurer providing the security required by Section 18897.87, and the amount of that insurance coverage, if the athlete agent provides some or all of that security in the manner required by subdivision (a) of Section 18897.87.

(2) The value and specific location of the security required by Section 18897.87, if the athlete agent provides some or all of that security in the manner required by subdivision (b) of Section 18897.87.

(g) Any appearances before any disciplinary or professional board, association, secretary, committee, or other entity as a result of disciplinary charges or other allegations of misconduct against the athlete agent or individual, and the outcome of those proceedings.

(h) Whether or not any student athlete or any educational institution has been sanctioned, suspended, or declared ineligible to participate in one or more interscholastic or intercollegiate athletic events in any proceeding arising from, or related to, the actions of the athlete agent.

(i) All past and present persons on behalf of whom the athlete agent or individual has acted as an athlete agent.

(j) The names of any players' associations with whom the athlete agent is registered.

(k) At least three references.

(l) Affidavits or certificate or completion of any and all formal training or practical experience in any of the following specific areas: contracts, contract negotiation, complaint resolution, arbitration, or civil resolution of contract disputes.

(m) The names and residence addresses of all persons financially interested in the operation of the business of the athlete agent,

whether as employees, partners, investors, associates, or profit sharers, or in any other manner.

(n) A schedule of fees to be charged and collected in the conduct of the athlete agent business.

18896.2. (a) Within seven days of the time any information in the filing required by Section 18896 changes, the athlete agent shall file revised information in the form that the Secretary of State shall prescribe.

(b) No revision of a fee schedule filed pursuant to subdivision (n) of Section 18896 shall be effective until it is filed pursuant to this section.

18896.3. The forms prescribed by the Secretary of State pursuant to Sections 18896 and 18896.2 shall include the following statement:

“Filing of false, misleading, or incomplete statements on this form may subject you to criminal and civil penalties under the Miller-Ayala Athlete Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and Professions Code.”

18896.4. Sections 18896 and 18896.2 do not require the disclosure of information related solely and exclusively to other businesses of the athlete agent.

18896.6. Upon making first contact, direct or indirect, with a professional athlete, a student athlete, a student athlete’s spouse, parent, foster parent, guardian, sibling, aunt, uncle, grandparent, child, or first cousin, any of the preceding persons for whom a relationship has been established by marriage, or any person residing in the same place as a student athlete, or a representative of any of these persons, an athlete agent, or his or her employee or representative, shall provide that person with a written notification stating: “This athlete agent has current public-disclosure information on file with the California Secretary of State as required by the Miller-Ayala Athlete Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and Professions Code, which also includes other protections for athletes. Filing of the required information does not imply approval by the California Secretary of State of the competence of the athlete agent.” The notification shall also include specific instructions on how to obtain the public disclosure information from the Secretary of State.

18896.8. (a) An athlete agent shall pay filing fees in an amount established pursuant to subdivision (b) upon making the filings required by Sections 18896 and 18896.2.

(b) The Secretary of State shall set applicable filing fees in the amounts necessary to generate revenue sufficient to cover the costs of administration of this chapter.

(c) All fees collected by the Secretary of State under this chapter shall be paid into the State Treasury and credited to the Business Fees Fund of the Secretary of State.

SEC. 3. Section 18897.1 is added to the Business and Professions Code, to read:

18897.1. The following shall be printed on the first page of every agent contract in boldface type at least two points larger than any other type on the page: “This athlete agent has current public disclosure information on file with the California Secretary of State as required by the Miller-Ayala Athlete Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and Professions Code, which also includes other protections for athletes. Filing of the required information does not imply approval by the California Secretary of State of the terms and conditions of this agent contract or the competence of the athlete agent.”

SEC. 4. Section 18897.63 of the Business and Professions Code is amended to read:

18897.63. (a) Except as otherwise provided in this section, no athlete agent or athlete agent’s representative or employee may make or continue any contact, whether in person, in writing, electronically, or in any other manner, with any student athlete, or any student athlete’s spouse, parent, foster parent, guardian, grandparent, child, sibling, aunt, uncle, or first cousin, or any of the preceding persons for whom the relationship has been established by marriage, or any person who resides in the same place as the student athlete, or any representative of any of these persons.

(b) An athlete agent or athlete agent’s representative or employee may send a student athlete, or any of the other persons described in subdivision (a), written materials, provided that the athlete agent previously has sent, or simultaneously sends, an identical copy of the materials to the principal, president, or other chief administrator of the elementary or secondary school, college, university, or other educational institution to which the student athlete has been admitted or in which the student athlete is enrolled.

(c) If a student athlete, or any of the other persons described in subdivision (a), initiates contact with an athlete agent or athlete agent’s representative or employee, the athlete agent, representative or employee may continue the contact and make new contacts with that person. No later than the first regular business day after that person first initiates contact, the athlete agent shall notify in writing the principal, president, or other chief administrator of the elementary or secondary school, college, university, or other educational institution to which the student athlete has been admitted or in which the student athlete is enrolled, of that contact. The notification shall describe the nature of the contact.

(d) Any written material described in subdivision (b) and any notification required by subdivision (c), shall include the notification required by Section 18896.6.

(e) This section does not apply to any contact between an athlete agent or athlete agent’s representative or employee and a student

athlete or any of the other persons described in subdivision (a), if and solely to the extent that the contact is initiated by an elementary or secondary school, college, university, or other educational institution to which the student athlete has been admitted or in which the student athlete is enrolled.

SEC. 5. Section 18897.87 of the Business and Professions Code is amended to read:

18897.87. Every athlete agent shall provide security for claims against the athlete agent or the athlete agent's representatives or employees based upon acts, errors, or omissions arising out of the business of the athlete agent through either one or an aggregate of both of the following:

(a) A policy or policies of insurance against liability imposed on or against the agent by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars (\$100,000).

(b) In trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars (\$100,000).

SEC. 6. Section 18897.97 is added to the Business and Professions Code, to read:

18897.97. The Secretary of State may, in accordance with Chapter 3.5 (commencing with Section 11430) of Part 1 of Division 3 of Title 2 of the Government Code, adopt, amend, and repeal rules and regulations reasonably necessary for the purpose of administering this chapter and consistent with this chapter.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

